

JUDGE GRIESA

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



DEBORAH DONOGHUE,

Plaintiff,

- against -

GREAT ATLANTIC & PACIFIC  
TEA CO. INC.,

COMPLAINT FOR RECOVERY OF  
SHORT-SWING PROFITS  
UNDER 15 U.S.C. 78p(b)

Nominal Defendant,

Jury Trial Demanded

ALETHEIA RESEARCH &  
MANAGEMENT, INC.,

Defendant.

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DEBORAH DONOGHUE, by David Lopez, Esq., her attorney, complaining of the defendants, respectfully alleges the following upon information and belief except as to paragraph 2 which plaintiff alleges on personal knowledge:

JURISDICTION:

1. This action arises under the provisions of Section 16(b) of the Securities Exchange Act of 1934, as amended (the "Act"), 15 U.S.C. Section 78p(b),

and jurisdiction is conferred upon this court by Section 27 of the Act, 15 U.S.C. Section 78aa.

**THE PARTIES:**

2. Plaintiff is a security owner of GREAT ATLANTIC & PACIFIC TEA CO., INC., ("THE A&P") a Maryland Corporation with principal office at 2 Paragon Drive, Montvale, New Jersey 07645.

3. At all times relevant the common stock of THE A&P was registered under Section 12 of the Act and was traded on the floor of the New York Stock Exchange located within this district.

4. This action is brought in the right and for the benefit of THE A&P which is named as a nominal party defendant solely in order to have all necessary parties before the court.

5. At all times relevant beginning on or about December 1, 2009, and continuing to on or about December 15, 2010, ALETHEIA RESEARCH & MANAGEMENT, INC. was a beneficial owner of more than 10% of the common stock of BARNES & NOBLE, INC. by reason of its discretionary authority over managed accounts and through partnerships with respect to which it serves as general partner.

6. ALETHEIA RESEARCH & MANAGEMENT, INC. is an investment adviser registered under the Investment Advisers Act.

7. ALETHEIA RESEARCH & MANAGEMENT, INC. is compensated by the partnerships with respect to which it serves as general partner and by one or more managed accounts in whole or in part through a performance-related fee and/or a partnership fee or allocation, thereby giving to it a pecuniary interest in the trading activity of those partnerships and managed accounts.

8. ALETHEIA RESEARCH & MANAGEMENT, INC. maintains a principal office and may be found at 100 Wilshire Boulevard, Suite 1900, Santa Monica, California 90401.

**STATUTORY REQUISITES:**

9. The transactions to be described herein involve non-exempt securities in non-exempt transactions engaged in by non-exempt persons within the meaning of the Act and the rules and regulations promulgated thereunder.

10. Demand for prosecution was first made on THE A&P on Plaintiff's behalf on May 22, 2011. More than 60 days have expired since that demand with no recovery having been achieved. Further delay in the filing of suit would be a futile gesture, the sixty day statutory waiting period having expired.

11. Some or all of the transactions to be described herein were effected in whole or in part within the Southern District of New York on the New York Stock Exchange.

12. This action is brought within two years of the occurrence of the violations to be described herein or within two years of the time when reports

required by 15 U.S.C. 78p(a) setting forth the substance of the transactions here complained of were first filed with the Securities & Exchange Commission.

**FIRST CLAIM FOR RELIEF:**

13. From December 1, 2009, to on or about December 15, 2010, when it ceased to be such beneficial owner, ALETHEIA RESEARCH & MANAGEMENT, INC. purchased 2,996,140 shares, more or less, of the common stock of THE A&P in multiple open market transactions.

14. While such beneficial owner ALETHEIA RESEARCH & MANAGEMENT, INC. sold 11,934,691 shares, more or less, of THE A&P common stock in multiple open-market transactions, many such sales effected at prices higher than paid for shares purchased within a period of less than six months.

15. The dates, quantities and prices of each such purchase or sale are enumerated in a Schedule 13D filed by ALETHEIA RESEARCH & MANAGEMENT, INC. with the Securities & Exchange Commission on or about December 21, 2009, and in Amendments 1 through 7 thereto filed from time to time thereafter until on or about December 29, 2011. All such filings may be viewed on the web site of the Securities & Exchange Commission, <http://www.sec.gov>.

16. The foregoing purchases and sales may be matched against one another using the "lowest-in, highest out" method to yield profits recoverable from ALETHEIA RESEARCH & MANAGEMENT, INC. to the extent of its pecuniary interest. The exact amount of such profits is not known to plaintiff and is dependent

on, *inter alia*, identification of the specific transactions in which ALETHEIA RESEARCH & MANAGEMENT, INC. had a pecuniary interest and the nature and extent thereof. Such determinations will require discovery.

17. Such profits to the extent not previously paid over are recoverable on behalf of THE A&P by Plaintiff as a shareholder of THE A&P, the latter having failed or refused to act in its own right and for its own benefit or failed or refused to account to plaintiff for any recovery.

**SECOND CLAIM FOR RELIEF:**

18. This Second Claim For Relief is a precaution against possible errors of detail attributable to inaccuracies in the public record or against the discovery of additional trades during the course of this action.

19. ALETHEIA RESEARCH & MANAGEMENT, INC., acting during periods not barred by the statute of limitations measured from the date of the filing of this complaint, purchased and sold or sold and purchased equity securities or equity security equivalents of THE A&P within periods of less than six months of each other while a beneficial owner of more than 10% of the common stock of THE A&P including all such purchases and sales described in the FIRST CLAIM FOR RELIEF.

20. By reason of such purchases and sales or sales and purchases of its equity securities or equity security equivalents within periods of less than six months of one another while an insider of THE A&P, ALETHEIA RESEARCH &

MANAGEMENT, INC. realized profits to the extent of its pecuniary interest in such transactions, the exact amounts thereof being unknown to Plaintiff, which profits inure to the benefit, and are recoverable by plaintiff on behalf, of THE A&P.

**WHEREFORE**, Plaintiff demands judgment:

- a) Requiring ALETHEIA RESEARCH & MANAGEMENT, INC. to account for and to pay over to THE A&P the short-swing profits realized and retained by it in violation of Section 16(b) of the Act, together with appropriate interest and the costs of this suit;
- b) Awarding to Plaintiff her costs and disbursements including reasonable attorney's, accountants and expert witness fees; and
- c) Granting to Plaintiff such other and further relief as the court may deem just and proper.

Dated: Southampton, New York  
November 29, 2011

Yours, etc.

David Lopez, Esq.